

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC., )  
)  
Plaintiff, )  
)  
v. )  
)  
HEALTHY SOLUTIONS, L.L.C., et al., )  
)  
Defendants. )  
CAPPSEALS, INC., )  
)  
Plaintiff-in-Intervention, )  
)  
v. )  
)  
HEALTHY SOLUTIONS, L.L.C., d/b/a )  
DIRECT BUSINESS CONCEPTS; ITV )  
DIRECT, INC.; and DIRECT )  
FULFILLMENT, LLC, )  
)  
Intervenor-Defendants. )  
\_\_\_\_\_ )

Civil Action No. 04-CV-10421-JLT

**JOINT MOTION TO BIFURCATE**

All of the respective parties, Cappseals, Inc. (“Cappseals”), ITV Direct, Inc., Direct Fulfillment, LLC (collectively, “ITV”), Healthy Solutions, Inc., Health Solutions, Inc., Michael Howell, Alejandro Guerrero, and Gregory Geremesz hereby jointly move that the trial of this matter, presently continued to a date uncertain, be scheduled on the next available date after this Court determines whether, in light of the facts stipulated by the parties annexed hereto as **Exhibit A**, Cappseals is entitled as a matter of law to a judgment against ITV. As further grounds for their motion the parties state as follows:

1. This court has already issued a judgment against Healthy Solutions and in favor of Cappseals. (Docket No. 91).

2. The Court previously scheduled a non-jury trial to begin on May 31, 2005 on Cappseals' reach and apply claim against ITV.

3. The Court has continued the trial to an undetermined date in the future to accommodate the scheduling concerns raised by ITV regarding its lead counsel.

4. In anticipation of the May 31 trial date the parties agreed on various factual stipulations. As a result of the stipulations annexed hereto as **Exhibit A**, Cappseals believes it is entitled to judgment as a matter of law against ITV. Cappseals asserts ITV can *not* use a potential judgment it hopes to recover from Healthy Solutions as a set off against the indebtedness owed to Cappseals under the purchase orders because of ITV's acceptance and subsequent sale of the products at issue. ITV disputes this conclusion, continuing to maintain that its claims and defenses against Healthy Solutions may be used as a defense to or offset against amounts that may be owed to Cappseals.

5. The parties have agreed – and request that this court endorse – an expedited briefing schedule to determine this wholly legal issue. More specifically, the following deadlines are proposed:

Cappseals' Initial Brief	June 3, 2005
ITV's Opposition	June 13, 2005
Cappseals' Reply Brief	June 17, 2005
ITV's Reply Brief	June 21, 2005

6. A ruling in Cappseals' favor will likely end this litigation without the need for trial as ITV and Healthy Solutions have represented to the Court that, but for Cappseals objection, they have settled their respective claims against each other.

7. A ruling in ITV's favor will inherently reduce the legal and factual issues to be disputed in any future trial.

WHEREFORE, the parties respectfully request that the Court endorse their Proposed Order attached as **Exhibit B**, continuing the trial date of the present matter until the first available date after the briefing schedule detailed above and a ruling on Cappseals' motion.

Respectfully submitted,  
CAPPSEALS, INC.  
By its attorneys,

/s/ Scott A. Silverman

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- and -

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By their attorney,

/s/ Becky V. Christensen

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ITV DIRECT, INC., and  
DIRECT FULFILLMENT LLC  
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/s/ Peter S. Brooks

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Dated: May 26, 2005

Certificate of service

I hereby certify that a true and accurate copy of the foregoing was served on the attorneys of record pursuant to Fed. R. Civ. P. 5 as follows:

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DATED: May 26, 2005